IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CRIMINAL REVISION PETITION NO. 166/2007

RAKESH KATARIYA Vs. Vs. STATE OF RAJASTHAN

DATE: 23.02.2007.

HON'BLE MR. K.S. RATHORE, J.

Mr. A.K. Gupta for the petitioner.
Mr. S.N. Gupta, PP for the State.

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R E P O R T A B L E

The present criminal revision petition under Section 397 r/w Section 401 Cr.P.C. is preferred by the petitioner against the order dated 01.02.2007 passed by the Additional Civil Judge (Jr. Division) & Judicial Magistrate, First Class No.20, Jaipur City, Jaipur taking cognizance against the accused-petitioner under Section 175 IPC and issuing bailable warrants in Criminal Case No. 13/2007.

Learned counsel for the petitioner referred Section 175 IPC, which reads as under:-

> **175. Omission to produce [document or electronic record] to public servant by person legally bound to produce it-** whoever, being legally bound to produce or deliver up any [document or electronic record] of any public servant, as such, intentionally omits so to

> produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both, or if the [document or electronic record] is to be produced or delivered up to a Court of Justice, with simple imprisonment for term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

Upon bare perusal of Section 175 IPC, it appears that the petitioner is legally bound to produce or deliver up any [document or electronic record] of any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

In the proviso of it, it is also made clear that if the [document or electronic record] is to be produced or delivered up to a Court of Justice, with simple imprisonment for term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Learned counsel for the petitioner further referred the procedure as the offence is non-cognizable and bailable and non-compoundable triable by any

Judicial Magistrate and in view of Section 195(1)(a) Cr. P.C., no Court can take cognizance of an offence punishable under Section 175 IPC except upon a complaint by public servant or Judge concerned or officer to whom such public servant and Judge was administratively subordinate.

He further submits that format is also prescribed in the statutes. After referring Section 175 IPC, learned counsel for the petitioner submits that here in the instant case no complaint whatsoever is filed by a public servant. Even considering that the document which was warranted to be produced before the Judge concerned, has not been produced, then also the Judge has to first register a complaint, even information in this regard and then can only further proceed to take cognizance under Section 175 IPC.

Learned Public Prosecutor appearing for the State submits that Judge concerned can take suo moto cognizance and on such eventuality if the person concerned refused to submit documents as warranted by the Judge concerned and, therefore, cognizance under Section 175 IPC has rightly been taken against the petitioner, which requires no interference by this Court.

Learned Public Prosecutor further referred Section 340 Cr.P.C, which is reproduced hereunder:-

> **340. Procedure in cases mentioned in section 195.-** (1) When upon an application made to it in this behalf or otherwise any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-
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> (a) record a finding to that effect;
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> (b) make a complaint thereof in writing;
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> (c) sent it to a Magistrate of the first class having jurisdiction;
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> (d) take sufficient security for the appearance for the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do send the accused in custody to such Magistrate; and
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> (e) bind over any person to appear and give evidence before such Magistrate.
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> (2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of

> that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of Section 195.
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> (3) A complaint made under this section shall be signed,-
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> (a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;
> (b) in any other case, by the presiding officer of the Court.
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> (4) In this section, “Court” has the same meaning as in section 195.”

Upon perusal of the Section 340 Cr.P.C., it is made clear that in the interest of justice, an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of Section 195.

Here in the instant case, even inquiry is lacking and no formal information in respect of offence under Section 175 IPC has been registered, therefore, cognizance which has been taken by the Court below under Section 175 IPC is contrary to the statutes and contrary to the provisions of Section 175 IPC. Not only this, after taking cognizance as the offence is admittedly non-cognizable and bailable, in such case summons can be issued. It appears that on issuing

summons, the petitioner has not turned up before the Court and then bailable warrant has been issued which has not been served, therefore, arrest warrant has been issued.

Although the cognizance itself is illegal but the conduct of the petitioner cannot be appreciated as the petitioner should have honour the order passed by the Court below and should have remain present before the Court below on the date fixed and can make submissions which are made here in the revision petition, but as the Judge concerned has committed wrong while taking cognizance, therefore, except expressing these observations, I have no option but to quash and set-aside the impugned order dated 01.02.2007, by which cognizance has been taken against the petitioner under Section 175 IPC with a warning to the petitioner that in future be careful in obeying the directions and instructions issued by the Court of law.

Learned counsel for the petitioner requests that these observations are not warranted as under Section 131 of the Indian Evidence Act, 1872, no one shall be compelled to produce documents in his possession or electronic record under his control, which any other person would be entitled to refuse to

produce if they were in his possession, or control, unless such last-mentioned person consents to their production.

I agree with the submissions made by the learned counsel for the petitioner, even then to maintain the dignity of the Court of law, I made these observations as a caution.

The revision petition stands disposed of accordingly.

(K.S. RATHORE),J.

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